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July 14, 2006

**By E-Mail and U.S. Mail**

Ms. Jessica Hecht  
jhe@cpuc.ca.gov  
CPUC—Consumer Service and Information Division, 2<sup>nd</sup> Floor  
505 Van Ness Avenue  
San Francisco, CA 94102

**Re: *Consumer Protection – "In Language" Phase*  
*Comments of the Small and Mid-sized LECs on*  
*Study Plan on Language Access Issues***

Dear Ms. Hecht:

In accordance with the procedural schedule outlined during the June 26, 2006 workshop, the Small and Mid-sized LECs<sup>1</sup> offer these comments on the Study Plan on Language Access Issues For California Telecommunications Consumers ("Study Plan"). The Small and Mid-sized LECs have reviewed the Study Plan, and each of the questions upon which the Commission is seeking comment. In general, the Study Plan provides a useful blueprint for the Commission to follow in complying with the directive of Commission Decision 06-03-013 that the Commission "perform a study of the special needs of and challenges faced by California telecommunications consumers with limited proficiency in English (LEP consumers)."

The Small and Mid-sized LECs do not have extensive comments on all aspects of the Study Plan, and these comments do not address each of the questions identified therein. However, the Small and Mid-sized LECs offer the following comments on issues of particular importance raised in the Study Plan, and in the discussion during the June 26, 2006 workshop.

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<sup>1</sup> The Small LECs and Mid-Sized LECs are the following carriers: Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Citizens Telecommunications Company Of California (U 1024 C) d/b/a Frontier Communications of California, Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Global Valley Networks, Inc. (U 1008 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), SureWest Telephone (U 1015 C), The Siskiyou Telephone Company (U 1017), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company (U 1021 C)

First, the Study Plan appropriately focuses on ways in which the Commission can improve its own practices to better serve LEP consumers, and to better educate LEP consumers about telecommunications issues. Second, consistent with the general consumer protection policy embodied in D.06-03-013, the Commission should focus on consumer education and enforcement of existing law rather than passing new prescriptive rules to address carriers' practices toward LEP consumers. Third, under current law, carriers' obligations to provide "in language" services are only triggered by specific marketing or sales practices, such that carriers can choose whether they wish to incur these obligations, in light of the populations that they serve and their particular business models. Each of these issues is addressed in further detail below.

**The Commission Should Examine its Own Practices to Ensure that it is Properly Equipped to Meet the Needs of LEP Consumers**

The Small and Mid-sized LECs support the Commission's efforts to improve the ways in which the Commission communicates with LEP consumers. The Study Plan appropriately asks whether the "existing processes of the Commission's Consumer Affairs Branch" are "serving the needs of LEP consumers." *Study Plan*, at p. 6. This is an important inquiry, as the Commission can act as a vital source of information and guidance for these consumers. Similarly, the Study Plan considers whether additional educational tools could be employed to facilitate Commission outreach to LEP consumers. The current consumer education phase of the Consumer Protection Initiative will go a long way toward fulfilling this educational goal, but this Study may uncover additional ways in which the Commission could be responding to the needs of LEP consumers. The Commission can fulfill an important public function in providing broad-based telecommunications information to these consumers, and in responding to their specific inquiries and issues in a streamlined and targeted manner. The Study Plan will help guide the Commission toward that goal.

**There is No Need for Additional Rules Governing Carriers' Interactions with LEP Consumers**

In D.06-03-013, the Commission concluded that consumer education and enforcement of existing law is a more appropriate way to protect consumers than "one-size-fits-all" regulations. With its focus on "educational needs to ensure language access" and "enforcement activities to provide consumer protection," the Study Plan is consistent with this general policy. Given the many differences between carriers, and the great diversity in the populations served by those carriers, it would be inappropriate to legislate particular carrier practices for interacting with LEP consumers. Rather, the Commission should focus on making LEP consumers aware of their rights, and on ensuring that these consumers do not suffer abuses under current law.

Indeed, California and federal law already include significant authority governing carriers' interactions with LEP consumers. Public Utilities Code Section 2890(b) provides that any "written or oral solicitation materials used to obtain an order for a product or service shall be

in the same language as the written order.” General Order 153 requires utilities to provide ULTS notices and offer toll-free customer service in any languages in which they “sell” ULTS. G.O. 153 § 4.6. Public Utilities Code Section 2889.5(a)(6) provides that “authorizations” to change telecommunications service providers must be “in language” if the authorizations are accompanied by other “in language” materials. Pub. Util. Code § 2889.5(a)(6). FCC regulations require that “opt out” notices regarding the use of Customer Proprietary Network Information (“CPNI”) cannot be translated partially into another language. 47 C.F.R. § 64.2008(c)(6). Similar restrictions are in place with regard to Letters of Agency (“LOAs”) and Third Party Verification (“TPV”) practices used to authorize changes in provider. *See* 47 C.F.R. § 64.1120(c)(3)(iv) (TPV calls must be in the same language as the underlying sales transaction); 47 C.F.R. § 64.1120(h) (LOAs cannot be partially translated).

Current law also includes a number of carrier-specific requirements and protections applicable to particular service offerings. CPUC Decision 96-10-076 outlines specific “in language” requirements for CLECs and large ILECs to the extent that they are “selling” their services in one or more of seven designated non-English languages (Spanish, Mandarin, Cantonese, Vietnamese, Korean, Japanese, and Tagalog). *See* D.96-10-076, Appendix. Similarly, D.98-08-031 contains “in language” protections specific to detariffed Non-Dominant Interexchange Carriers (“NDIECs”). *See* D.98-08-031, Appendix A, Rule 3(d). Moreover, current law imposes specific restrictions on “in language” practices relative to prepaid calling cards, providers of 900 number services, and commercial wireless text messages. *See* Cal. Bus. & Prof. Code § 17538.9(b)(4), (5) (prepaid calling card disclosures must be in same languages as advertising or promotional materials); Cal. Bus. & Prof. Code § 17539 (900 number services advertisements should be in the same language that will be used on the call); 16 C.F.R. 308.3(a)(1) (pay-per-call service disclosures should be in the same language as advertisements for the service); 47 C.F.R. § 64.3100(d)(6) (disclosures in authorization to receive commercial wireless text messages must be in same language as the authorization generally).

Even setting aside the federal and state “in language” protections that are specific to the telecommunications arena, there are many provisions in general California law that help protect LEP consumers against unfair business practices. Notably, California Business and Professions Code Section 17200 prohibits any business practice that is unfair, unlawful, or deceptive. Numerous contract law and fraud concepts also protect LEP consumers from abuse. *See, e.g., Nicholas v. Harger-Haldeman*, 196 Cal.App.2d 77 (1961) (contract voidable where party to contract does not read English, written document is in English, and other party misrepresents the contents of the contract).

As the above summary illustrates, current law provides a number of mechanisms to prevent abuse against LEP consumers. These existing protections are sufficient to address the challenges faced by these customers in the telecommunications marketplace. To the extent that Commission enforcement is necessary to curb abuse, the Commission has ample authority through which to pursue such enforcement actions. In general, however, the Small and Mid-

sized LECs continue to believe that consumer education is the best way to protect LEP consumers.

**The Study Plan Should Recognize the Importance of Carrier-Specific Flexibility in Meeting the Needs of the Particular Populations that Those Carriers Serve**

In conducting the study outlined in the Study Plan, it will be important for the Commission to understand that a carrier's policy for interacting with LEP consumers will naturally differ according to the carrier's particular business model, and according to the needs identified in carrier's target customer base. California carriers serve a wide variety of different populations, and these carriers have geared their practices to cater to the interests of those populations. While the largest carriers in California may serve millions of LEP customers, some of the small and mid-sized carriers serve very few LEP customers, if any. In light of these differences, what may be an appropriate policy for a large carrier serving a significant LEP consumer population may not be reasonable or cost-justified in the context of a much smaller carrier serving a limited LEP population.

The current law recognizes these differences through reliance on a series of flexible "in language" requirements, many of which are inapplicable if carriers are not actively "selling" or "soliciting" in languages other than English. As the Commission moves forward in fulfilling the goals of the Study Plan, it will be critical to ensure that the rules continue to be interpreted in this flexible manner.

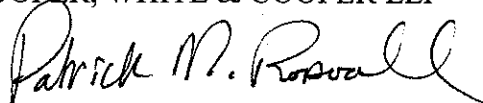
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The Small and Mid-sized LECs support the Study Plan's focus on enforcement, consumer education, and improving the Commission's practices for interacting with LEP consumers. The Small and Mid-sized LECs appreciate the opportunity to comment on the Study Plan, and look forward to working with the Commission as this proceeding moves forward.

Should you have any questions regarding the foregoing, please contact the undersigned at (415) 765-0369, or by email at [prosvall@cwclaw.com](mailto:prosvall@cwclaw.com)

Very truly yours,

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